



New Investment Funds Legislation in the Bahamas

NEW LEGISLATION - the *Investment Funds Act, 2019 (as amended)* and *Investment Funds Regulations, 2020* (which repeal and replace the *Investment Funds Act, 2003* and the *Investment Funds Regulations, 2003*) are now in force (the "**New Law**").

An aim of the New Law is to bring Bahamian law with respect to investment funds into harmony with international standards and best practices, to expand the scope of powers of the Securities Commission of The Bahamas (the "**SCB**") in relation to regulated persons and parties related to an investment fund and to protect investors.

The New Law also aims to develop provisions compliant with the European Union's (the "**EU**") *Alternative Investment Fund Managers Directive 2011/61/EU* (the "**AIFMD Directive**") which enables Bahamas based funds and investment fund managers to be able to continue to market themselves within Europe and position The Bahamas for the EU passporting process when the next round of assessments by the European Securities Commission Market Authority (**ESMA**) resumes.

What changes are applicable to investment funds?

0. *Recognized Foreign Funds*^[1] are no longer regulated by the SCB. However, any fund, regardless of where it is incorporated, registered or established, must license as a Fund in The Bahamas if it intends to make invitation in The Bahamas to non-accredited investors.

0. *Non-Bahamas Based Investment Funds*^[2], are now required to notify the SCB of the start or termination of nexus to The Bahamas. Such funds must also file a copy of their Offering Memorandum with the Commission if their equity interests are being sold in The Bahamas

0. Closed-end funds are now required to be licensed.

How are Investment Managers impacted?

0. All investment funds regulated by the SCB pursuant to the New Law are required to appoint an investment manager who must be registered with the SCB.

0. An investment manager of a standard fund must register under the *Securities Industry Act, 2011* (the "**SIA**") and the New Law, unless licensed or registered in a prescribed jurisdiction^[3] in which case, it must only register under the New Law.

0. An investment manager of investment funds classified as professional funds, SMART fund or any other fund in any other jurisdiction, other than the EU, whose equity interests are offered to accredited investors must register under the New Law.

- 0. Investment managers are now subjected to statutory duties and responsibilities under the New Law including *inter alia* the following duties:
- 0. to act honestly and fairly and with due skill, care and diligence;
- 0. to act in the best interest of each investment fund, its investors and the integrity of the market;
- 0. to avoid conflicts of interest;
- 0. observe and maintain a high standard of professional conduct and
- 0. refrain from engaging in any improper or illegal conduct.

0. In order to align The Bahamas with the requirements of the AIFMD Directive, the New Law provides a licensing regime as an 'Alternative Investment Fund Manager' ("**AIFM**"). Accordingly, any Bahamian entity intending to market an investment fund or an alternative investment fund established in a Member State^[4] ("**EU AIF**") in the EU with an EU passport; or manage an EU AIF with an EU passport irrespective of where the EU AIF is marketed, must now apply to the SCB for a license as an AIFM.

0. Investment managers must request the prior approval of the SCB before delegating any of their duties and are now prohibited from delegating their functions to such an extent that they become letter-box entities. In the event of delegation, the investment manager still remains ultimately liable to the investment fund for the actions of any of its delegates or sub-delegates, as the case may be.

0. Investment managers must now file an annual declaration providing the particulars set out in 'Form C'^[5].

How are Investment Fund Administrators impacted?



0.An investment fund is no longer required to appoint an administrator that is licensed by the SCB. Such administrator, may be licensed in a prescribed jurisdiction and must make arrangements for a principal office^[6] in The Bahamas for Bahamian regulated funds under administration.

0.All Investment Fund administrators licensed by the SCB must now appoint a Chief Executive Officer and Compliance Officer.

Are Custodians affected?

0.An investment fund must appoint a custodian unless the structure of the investment fund or the nature of the assets are such that they do not require a custodian.

0.The custodian must meet the requirements of the New Law and must either be a bank and trust licensee of the Central Bank of The Bahamas, a licensee of the SCB pursuant to the SIA, or an institution approved by the SCB and subject to on-going regulation in a prescribed jurisdiction.

0.A custodian of an investment fund now has a statutory duty to ensure that the instructions of the investment manager are carried out and in transactions involving the sale of an investment fund's assets, any consideration is remitted to the investment fund without delay.

0.In compliance with the AIFMD Directive, the New Law introduces provisions for the appointment of an AIFMD Custodian by an AIFM, which in addition to the general requirements of the New Law may also be a custodian authorized by a competent authority of an EU AIF.

Transitional Provisions

0.Investment managers that are managing an investment fund prior to 01 September, 2019 have 12 months from 01 September 2019 to register with the SCB in accordance with the New Law.

0.Failure of an investment manager to register under the New Law may subject such investment manager to a fine of US\$50,000.00 upon summary conviction, and a further fine of US\$1,000.00 per day for which non-compliance continues.

0.An investment fund licensed either by the SCB or its administrator under the now the repealed *Investment Funds Act, 2003* is deemed to be licensed under the New Law.

For those desiring a copy of the New Law:

0.Investment Funds Act, 2019 (Appointed Day) Notice, 2019 [http://www.scb.gov.bs/documents/Investment%20Funds%20Act%202019%20\(Appointed%20Day%20Notice\).pdf](http://www.scb.gov.bs/documents/Investment%20Funds%20Act%202019%20(Appointed%20Day%20Notice).pdf)

0.Investment Funds Act, 2019 <http://www.scb.gov.bs/documents/Investment%20Fund%20Act%202019%20gaz%2030.4.19.pdf>

0.Investment Funds (Amendment) Act, 2019 [http://www.scb.gov.bs/documents/Investment%20Funds%20\(Amendment\)%20Act%202019.pdf](http://www.scb.gov.bs/documents/Investment%20Funds%20(Amendment)%20Act%202019.pdf)

0.Investment Funds (Amendment) Act, 2020 [http://www.scb.gov.bs/documents/Investment%20Funds%20\(Amendment\)%20Act%202020.pdf](http://www.scb.gov.bs/documents/Investment%20Funds%20(Amendment)%20Act%202020.pdf)

0.Investment Funds Regulations, 2020 <http://www.scb.gov.bs/documents/Investment%20Funds%20Regulations.%202020.pdf>



For further assistance or clarification:

If you have further questions, please contact the securities lawyers of Delaney Partners at info@delaneypartners.com.

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[1] Pursuant to the now repealed *Investment Funds Act, 2003* this classification was applicable to an investment fund licensed or registered in a recognised jurisdiction or listed on a recognised foreign exchange as prescribed.

[2] Investment funds incorporated, registered or established in a jurisdiction other than The Bahamas with a nexus to The Bahamas, through either being administered or managed in or from The Bahamas.

[3] The SCB is presently finalizing its list of prescribed jurisdictions, however a draft of the list may be found here: [http://www.scb.gov.bs/documents/Investment%20Funds%20\(Prescribed%20Jurisdictions\)%20Rules%202019%20-%20Consultation%20Document.pdf](http://www.scb.gov.bs/documents/Investment%20Funds%20(Prescribed%20Jurisdictions)%20Rules%202019%20-%20Consultation%20Document.pdf)

[4] A state which is a member of the EU in which the AIFMD Directive has been implemented.

[5] A copy of the form may be found here: <http://www.scb.gov.bs/documents/IFAFund%20-%20Schedule%20-%20Form%20C-%20Annual%20Declaration%20for%20Investment%20Fund%20Manager.pdf>

[6] The address or primary place of business of an investment fund or an investment fund administrator.